

Application No. 10/070,966
Applicant: Udo HOLKER
Amendment Dated January 22, 2004
Reply to Office Action of October 22, 2003

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicant respectfully requests that this be considered a petition therefor. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

REMARKS/ARGUMENTS

Applicant respectfully requests reconsideration and allowance of this application in view of the amendments above and the following comments.

Because the Examiner renumbered the claims, and Applicant was unsure whether the dependency thereof was also changed, Applicant has replaced the previous set of claims by a new set of claims. For the Examiner's convenience, Applicant points out that the new claims correspond to the previous claims as follows:

<u>New Claim:</u>	<u>Previous Claim:</u>
53	27
54	28
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58	32
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78, 79	51
80	52

Compared to the previous claims, some purely editorial changes have been made, such as, for example, removing the drawing reference numerals. However, Applicant does not believe that any of the changes introduce any new matter, or narrow the scope of the claims.

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Claim 47 was objected to because there was insufficient antecedent basis in claim 44 for the recitation "wherein said substances are selected from coal, wood and loaded soils" appearing in claim 47. In response, Applicant points out that new claim 73 now recites "wherein said ***solid substrates*** are selected from the group consisting of coal, wood and loaded soils." There is clear antecedent basis for this recitation in claim 71, from which claim 73 depends. Claim 71 says in the very first line thereof that the method comprises "the aerobic fermentation of ***solid substrates***." In view of the foregoing, Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

Claims 27-52 were rejected under 35 USC § 112, second paragraph, as being indefinite. In response to the Examiner's first bullet point, Applicant points out that new claim 53, which replaces previous claim 27, adopts the Examiner's suggested language, i.e., "having" instead of "characterized by."

With respect to the Examiner's second and third bullet points, Applicant sees no need to limit the claims in the manner the Examiner proposes. Applicant would remind the Examiner that breadth is not indefiniteness. The fact that the claims are broad does not, in and of itself, establish that the claim is without metes and bounds. Applicants submit that in spite of the breadth of the claims persons skilled in the art would understand, given the instant specification, what is encompassed by the phrases "bioreactive substance" and "reaction medium." Therefore, these terms are not indefinite. Moreover, Applicant would also point out that the Examiner cites no prior art establishing either that the invention was known or, at the time it was made, would have been obvious to persons skilled in the art. As such, Applicant is a pioneer in a sense, and is entitled to the broad claims to the broad concept. *In re Hogan et al.*, 194 USPQ 527, 537 (CCPA 1977).

With respect to the Examiner's fourth bullet point, Applicant points out that new claim

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76, which replaces previous claim 49, uses the phrase "fermentable microorganism." Applicant submits that such phrase is not indefinite since persons skilled in the fermentation art know what microorganisms are fermentable.

Finally, with respect to the Examiner's fifth bullet point, Applicant points out that claims 78 and 79, which replace previous claim 51, are indirectly dependent on claim 71, which, in turn, recites a recovery step. Accordingly, these claims need not recite a recovery step.

In view of the foregoing, Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

Early and favorable action is earnestly solicited.

Respectfully submitted,
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By

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Amendment (10 pages total) is being facsimile transmitted to the United States Patent and Trademark Office on the date indicated below:

Date: January 22, 2004

By

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